

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



February 3, 2005

Regulation Package #0203-04

CDSS MANUAL LETTER NO. CFC-04-02

TO: HOLDERS OF THE CONFIDENTIALITY, FRAUD, CIVIL RIGHTS AND STATE
HEARINGS MANUAL, DIVISION 22Regulation Package #0203-04

Effective 9/17/04

Sections 20-400, 20-401, 20-402, 20-403, 20-404, 20-405, and 20-406

This manual letter has been posted on the Office of Regulations Development website at
http://www.dss.cahwnet.gov/ord/Confidenti_615.htm.

The Deficit Reduction Act of 1984 (P.L. 98-369, Section 2653) set general criteria for determining which debts are referable under federal tax offset. The California Department of Social Services began the Federal Tax Intercept program in tax year 1992, collecting Food Stamp (FS) over issuances consisting of FS Intentional Program Violations (IPVs) and Inadvertent Household Errors (IHEs) at the Internal Revenue Service (IRS) under special authority of Section 17(b) of the Food Stamp Act. Final Regulations 7 CFR 271 were published on September 1, 1995. The Debt Collection Act of 1982 as amended (P.L. 97-365) authorized federal agencies to offset debts through federal wage, salary and retirement payments, although this match was not initiated by the Food and Nutrition Service (FNS) until 1996. The Debt Collection Improvement Act of 1996 (P.L. 104-134) mandated state participation (which had been optional) in the Treasury Offset Program (TOP). TOP includes the Federal Tax Intercept Program and the Federal Salary Offset Program (FSOP). It also expanded FSOP to include Social Security payments in addition to salaries and benefits.

In current regulations the CalWORKs/FS Intercept Program is an annual process. Counties submit delinquent accounts by May 1 of each year for intercept the following tax season. Any debt which becomes delinquent after May 1 is not submitted for tax intercept until the following May. Counties have the ability to remove or change the dollar amount of these accounts by submitting a file to CDSS by September 1.

As a result of the changes to the federal portion of the CalWORKs/FS Intercept Program, CDSS implemented the Welfare Intercept System (WIS) Enhancement Project. Key changes to the system allow the counties to establish, increase, decrease, or delete accounts as appropriate throughout the year. WIS is updated on a weekly basis with information provided by counties, the Franchise Tax Board, and the Internal Revenue Service. Moving to a continuous system will allow counties to keep account information more current and accurate. These regulations incorporate these changes.

These regulations were considered at the Department's public hearing held on September 17, 2003.

FILING INSTRUCTIONS

Revisions to all manuals are indicated by a vertical line in the left margin. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Confidentiality, Fraud, Civil Rights, and State Hearings Manual changes was CFC-04-01.

Page(s)

58 through 65.1

Replace(s)

Pages 58 through 65.1

Attachments

SK

20-400	CALIFORNIA WORK OPPORTUNITY AND RESPONSIBILITY TO KIDS/FOOD STAMPS (CALWORKS /FS) INTERCEPT PROGRAM	20-400
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HANDBOOK BEGINS HERE

- .1 The CalWORKs/FS Intercept Program is a program designed to assist the counties in the collection of delinquent welfare overpayments/overissuances. Participation in the Treasury's Offset Programs portion of the Intercept Program is mandatory.
- .2 It is important to note at the outset that certain limitations are imposed on the CalWORKs/FS Intercept Program. Section 8790.2 of the State Administrative Manual (SAM) provides, in part:
 - .21 "...The offset procedure augments rather than replaces existing tax and other collection procedures and is for use when effective procedure does not exist and the State would otherwise suffer loss. An agency's remedy under the special laws applicable to its particular program and the general laws of the State is normally more appropriate and should be used unless circumstances are such that the offset procedure is the most logical method of collection...."

HANDBOOK ENDS HERE

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10063(b), 10553, and 10554, Welfare and Institutions Code; Section 12419.5, Government Code; and 7 CFR 273.18(n).

20-401	DEFINITIONS	20-401
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- (a) (Reserved)
- (b) (Reserved)
- (c) (Reserved)
- (d) (Reserved)
- (e) (Reserved)
- (f)
 - (1) Franchise Tax Board (FTB) --means the state governmental agency in California designated for collecting State income taxes.
 - (2) Food and Nutrition Service (FNS) -- means that part of the United States Department of Agriculture (USDA) that has responsibility for the Food Stamp Program.

20-401	DEFINITIONS (Continued)	20-401
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(3) Federal Salary Offset -- means that part of the Treasury's Offset Programs that requires delinquent food stamp overissuances to current federal government employees be collected through wage attachment.

(4) Treasury's Offset Programs (TOP) -- means the offset program administered by FNS in conjunction with the Internal Revenue Service (IRS) to intercept federal tax refunds and/or other eligible federal payments to repay a delinquent food stamp overissuance due to an intentional program violation (IPV), inadvertent household error (IHE), or administrative error (AE).

(g) (Reserved)

(h) (Reserved)

(i) (1) Intercept -- means an action of taking money from an individual's state/federal income tax refund, lottery winnings, and/or other eligible federal payments to satisfy a welfare overpayment/overissuance.

(2) Internal Revenue Service (IRS) -- means the federal governmental agency designated to collect federal income taxes.

(j) (1) Judgment debt -- means an overpayment or overissuance that has been reduced to a final judgment entered by a court ordering the debtor to pay the debt.

(k) (Reserved)

(l) (1) Legally enforceable -- means the authority to establish and collect food stamp overissuances based on the food stamp regulations and relevant court orders in effect at the time of the overissuance.

(m) (Reserved)

(n) Non-court-ordered restitution -- means repayment of aid overpaid or benefits overissued as a result of, but not limited to, the following: inadvertent household errors, administrative errors, a signed waiver of right to an administrative disqualification hearing, or a signed Disqualification Consent Agreement.

(o) (Reserved)

(p) (Reserved)

(q) (Reserved)

20-401	DEFINITIONS (Continued)	20-401
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- | (r) (1) Respond to a demand -- means either paying or negotiating to pay.
- (2) Right of recovery -- means the authority to initiate the intercept and make collections based on overpayment/overissuance regulations and relevant court orders in effect at the time of the overpayment/overissuance.
- | (s) (Reserved)
- | (t) (Reserved)
- | (u) (1) United States Department of Agriculture (USDA) -- means the federal governmental agency that has overall responsibility for the Food Stamp Program.
- | (v) (Reserved)
- | (w) (Reserved)
- | (x) (Reserved)
- | (y) (Reserved)
- | (z) (Reserved)

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Section 12419.5, Government Code; Anderson v. McMahon, Superior Court, Alameda County, 1989, No. 620039-4, stipulation and court order for entry of judgment, filed August 22, 1989; Akar v. Anderson (1997) 58 Cal.App.4th 1166; Federal Register, August 20, 1991 (56 FR 41325-31); Federal Register, August 28, 1992 (57 FR 39176-77); Federal Register, August 12, 1993 (58 FR 42937); Federal Register, September 17, 1993 (58 FR 48633); Federal Register, September 1, 1995 (60 FR 45990); Deficit Reduction Act of 1984 (DEFRA) (31 USC 2720A); Food Stamp Act of 1977 [7 USC 2026 Section 17 (b)]; Debt Collection Improvement Act of 1996 (31 USC 3716); Public Law 104-193 (7 USC 2002(b)(1); 7 CFR 273.18; and 7 CFR 273.18(n).

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20-402	GENERAL REQUIREMENTS	20-402
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- .1 The county shall have a right of recovery or determined that the debt is legally enforceable, prior to submission of the case for intercept as prescribed in Manual of Policies and Procedures (MPP) Section 20-403. For purposes of this section as defined under 7 and 31 CFR, “legally enforceable” means that there are no legal bars, such as a pending administrative hearing; is in litigation or foreclosure, bankruptcy, etc.
- .2 Each county shall submit to the California Department of Social Services (CDSS) all eligible cases on a continuous basis. Eligible cases shall be submitted in the manner and timeframe prescribed in MPP Section 20-404.

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Section 12419.5, Government Code; Anderson v. McMahon, Superior Court, Alameda County, 1989, No. 620039-4, stipulation and court order for entry of judgment, filed August 22, 1989; Federal Register, August 20, 1991 (56 FR 41325-31); Federal Register, August 28, 1992 (57 FR 39176-77); Federal Register, August 12, 1993 (58 FR 42937); Federal Register, September 1, 1995 (60 FR 45990); Deficit Reduction Act of 1984 (DEFRA) (31 USC 2720A); Food Stamp Act of 1977 [7 USC 2026 Section 17 (b)]; 7 CFR 273.18; and 31 CFR 285.2.

20-403	ELIGIBILITY REQUIREMENTS	20-403
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- .1 Cases for IRS in which there is a right of recovery or legally enforceable shall be delinquent at least 3 months and not greater than 10 years except in the case of a judgment debt and have an overpayment/overissuance(s) of at least \$25. Cases for FTB must be delinquent at least 3 months, but may be more than 10 years old and have an overpayment/overissuance(s) of at least \$10. Both IRS and FTB cases shall meet at least one of the following requirements:
 - .11 Restitution of CalWORKs overpayments due to either applicant/recipient and/or county administrative errors for which the household has failed to make a response to a written demand letter(s).
 - .111 Repealed by Manual Letter No. CFC-98-01, effective 7/1/98.
 - .12 Court-ordered restitution of CalWORKs overpayments.
 - .13 Court-ordered restitution of a food stamp overissuance as a result of an intentional program violation (IPV) as defined in MPP Section 20-300.1.
 - .14 Restitution of food stamp overissuances which are the result of an IPV as determined by an Administrative Disqualification Hearing in accordance with MPP Section 20-300.23 and MPP Chapter 22-200.
 - .15 Non-court-ordered restitution of all food stamp overissuances for which the household has failed to respond to the written demand letter(s) and for which the claim has not been terminated.
- .2 The following cases shall not be eligible for intercept:
 - .21 Cases which are eligible for a CalWORKs grant adjustment or a food stamp allotment reduction;
 - .22 Cases in which the individual is making regular restitution payments;
 - .23 Cases in which the time to request a state hearing has not lapsed;
 - .24 Cases in which the individual has requested a state hearing or is awaiting a decision from a state hearing or has received an adopted state hearing decision which determined that there is no overpayment/overissuance or the overpayment/overissuance has already been recovered. If the individual has requested a state hearing or is awaiting a decision from a state hearing, the county welfare department shall notify CDSS to remove the individual from the tax intercept program; and

20-403	ELIGIBILITY REQUIREMENTS	20-403
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(Continued)

- .25 Nonfraudulent overpayment/overissuance(s) totaling less than \$35 in accordance with MPP Sections 44-350.141, 44-352.21, and 63-801.411.

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Section 10063(b), Welfare and Institutions Code; Section 12419.5, Government Code; Anderson v. McMahon, Superior Court, Alameda County, 1989, No. 620039-4, stipulation and court order for entry of judgment, filed August 22, 1989; Federal Register, August 20, 1991 (56 FR 41325-31); Federal Register, August 28, 1992 (57 FR 39176-77); Federal Register, August 12, 1993 (58 FR 42937); Federal Register, September 1, 1995 (60 FR 45990); Deficit Reduction Act of 1984 (DEFRA) (31 USC 2720A); Food Stamp Act of 1977 [7 USC 2026 Section 17 (b)]; and 7 CFR 271, 272, and 273.18.

20-404	FORMAT	20-404
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- .1 Counties shall submit information regarding eligible cases either by magnetic data tape, cartridge, diskette, wire-to-wire, or paper documents. Such information shall contain, but is not limited to, the following:
- .11 County number and name;
- .12 Name of individual;
- .13 Address of individual;
- .14 Social security number of individual;
- .15 Total amount of delinquent CalWORKs overpayment or FS overissuance separated as to FTB or IRS amount owed, administrative error (AE) amount owed, IPV amount owed and IHE amount owed; and

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20-404	FORMAT (Continued)	20-404
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.16 Optional information (i.e., case, district, and/or worker numbers).

.2 Counties shall submit cases for intercept to CDSS once they meet the criteria for intercept in accordance with MPP Section 20-403.

.3 Counties shall update delinquent case amounts submitted to CDSS when county information indicates that an erroneous or an excess amount is to be intercepted if action is not taken. Update information shall contain, but not be limited to, the following:

.31 County name;

.32 Social security number;

.33 Individual's name;

.34 Amount to be reduced/increased by; and

.35 Type code (i.e., "2", "3", "4", "7") for "decreasing" the amount requested, or "deleting" an individual from the list, or "the amount refunded" to an individual due to an overcollection, or "increasing" the amount requested.

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Section 10063(b), Welfare and Institutions Code; Section 12419.5, Government Code; Anderson v. McMahon, Superior Court, Alameda County, 1989, No. 620039-4, stipulation and court order for entry of judgment, filed August 22, 1989; Federal Register, August 20, 1991 (56 FR 41325-31); Federal Register, August 28, 1992 (57 FR 39176-77); Federal Register, August 12, 1993 (58 FR 42937); Federal Register, September 1, 1995 (60 FR 45990); Deficit Reduction Act of 1984 (DEFRA) (31 USC 2720A); Food Stamp Act of 1977 [7 USC 2026 Section 17 (b)]; and 7 CFR 273.18.

20-405	CERTIFICATION	20-405
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| | .1 | Each year the county shall complete and sign a statement under penalty of perjury certifying the accuracy of the delinquent account information submitted for that year. |
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NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 12419.5, Government Code; Anderson v. McMahon, Superior Court, Alameda County, 1989, No. 620039-4, stipulation and court order for entry of judgment, filed August 22, 1989.

	20-406	INTERCEPT PRE-OFFSET WARNING NOTICE TO DELINQUENT RECIPIENTS	20-406
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| | .1 | A pre-offset warning notice shall be sent to delinquent CalWORKs/FS recipients by CDSS at least 30 days prior to intercept for FTB indicating that their name is being referred to FTB for intercept. CDSS shall mail a pre-offset warning notice at least 60 days prior to intercept for claims referred for collection through the IRS indicating that their name is being referred to IRS for intercept. In addition, CDSS shall mail an annual pre-offset warning notice by September 1 to delinquent CalWORKs/FS recipients who have been referred for collection through FTB. |
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| | .11 | The pre-offset warning notice shall contain, but not be limited to, the following information: |
| | .111 | The certified delinquent amount submitted by the county to CDSS; |
| | .112 | The name, address, and phone number of the county submitting the intercept information; |
| | .113 | The recipient's right to contest the referral and request an administrative review before an agency representative as outlined in Section 20-407; |
| | .114 | Possible reasons for disagreeing with the action, such as the amount(s) shown as past due is incorrect or an assertion by the individual that he/she never received CalWORKs or food stamp benefits. |

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| | .2 | For the purposes of FTB intercept, if CDSS does not receive an address from the county or FTB for a recipient, the recipient will be removed from the file by CDSS. |
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| | .3 | The CWD shall attempt to identify a more current address for cases in which the pre-offset warning notices are returned as undeliverable by the post office. |
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20-406	INTERCEPT WARNING NOTICE TO DELINQUENT RECIPIENTS	20-406
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(Continued)

- .31 Notices that are undeliverable due to clerical or typographical errors shall be corrected and remailed by the CWD.
- .32 Cases in which attempts to notify the recipients have been unsuccessful shall not be deleted from the intercept submission list.
- .33 Regarding both Federal and FTB intercept warning notices: the county shall obtain the best known address.
- .34 If, after a number of attempts to mail have been made and the mail is subsequently returned to the CWD as undeliverable and a more current address is not found by the CWD, the notice and the envelope shall be placed in the case file and the file annotated to document the attempt to mail; or the attempt to mail shall be recorded on a computerized accounts receivable system and the notice and envelope filed centrally. The notice and envelope shall be retained in accordance with MPP Section 23-353 (Records Retention).

HANDBOOK BEGINS HERE

- .4 If a claim is referred to the IRS, a charge for the administrative cost of collection will be added to the claim amount, and that amount will be deducted from the intercepted amount.

HANDBOOK ENDS HERE

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Section 10063(b), Welfare and Institutions Code; Section 12419.5, Government Code and Wightman v. Franchise Tax Board, 249 Cal Rptr. 207, 202 C.A. 3d 966; Anderson v. McMahon, Superior Court, Alameda County, 1989, No. 620039-4, stipulation and court order for entry of judgment, filed August 22, 1989; Federal Register, August 20, 1991 (56 FR 41325-31); Federal Register, August 28, 1992 (57 FR 39176-77); Federal Register, August 12, 1993 (58 FR 42937); Federal Register, September 1, 1995 (60 FR 45990); Deficit Reduction Act of 1984 (DEFRA) (31 USC 2720A); Food Stamp Act of 1977 [7 USC 2026 Section 17 (b)]; and 7 CFR 273.18.

20-407	ADMINISTRATIVE REVIEW PROCEDURES	20-407
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- .1 If a recipient challenges an intercept submission after receipt of the warning notice, the submitting county shall attempt to resolve the dispute through an administrative review which may include, at the recipient's request, a face-to-face meeting. This review may also be requested at any time during the calendar year in which a tax intercept may have occurred. The informal review procedure is as follows:
 - .11 An impartial agency representative appointed by the agency director and empowered to correct the submission by the county shall conduct the review. When requested, this review must be provided within ten (10) working days of the receipt of the request.

20-407	ADMINISTRATIVE REVIEW PROCEDURES (Continued)	20-407
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- .12 The agency representative shall review the case information that substantiates the "right of recovery" or "legally enforceable," including the cause(s), amount(s), and period(s) of the overpayments/overissuances.
- .13 The agency representative shall review all necessary legal documents and proof of payment by the recipient.
- .14 The agency representative shall report the findings to the recipient in writing within ten (10) working days of the review. The findings shall inform the recipient of the right to a state hearing under MPP Division 22.
- .15 With regard to federal tax intercept, the individual is entitled to have FNS review the state hearing decision. CDSS shall inform the individual of this right in writing at the time the state hearing decision is rendered.
- .16 If an error is found, the county shall:
 - .161 Correct all records, accounts receivable, and automated systems;
 - .162 Submit an updated case delinquent amount to CDSS within 10 calendar days; and
 - .163 Promptly return any excess money intercepted to the recipient. (See MPP Section 20-408.)

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Section 12419.5, Government Code; Wightman v. Franchise Tax Board, 249 Cal. Rptr. 207, 202 C.A. 3d 966, and Anderson v. McMahon, Alameda County, 1989, No. 620039-4, stipulation and court order for entry of judgment, filed August 22, 1989; Federal Register, August 20, 1991 (56 FR 41325-31); Federal Register, August 28, 1992 (57 FR 39176-77); Federal Register, August 12, 1993 (58 FR 42937); Federal Register, September 1, 1995 (60 FR 45990); Deficit Reduction Act of 1984 (DEFRA) (31 USC 2720A); Food Stamp Act of 1977 [7 USC 2026 Section 17 (b)]; and 7 CFR 273.18.

20-408	REFUND OF EXCESS INTERCEPTS	20-408
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- .1 Counties shall refund excess money intercepted to the recipient within ten (10) calendar days after the decision has been made to refund money regardless of whether or not the counties have received the intercepted funds.

20-408	REFUND OF EXCESS INTERCEPTS	20-408
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- .2 When excess intercepted money is refunded to the recipient, but is returned by the post office as undeliverable, counties shall attempt to identify a more current address and remail the refund.
- .3 Any money which is undeliverable shall be retained by the county and not returned to CDSS.

NOTE: Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 12419.5, 50050, 50052, and 50055, Government Code; Anderson v. McMahon, Alameda County, 1989, No. 620039-4, stipulation and court order for entry of judgment, filed August 22, 1989.

20-409	SAFEGUARD PROCEDURES	20-409
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- .1 Counties shall establish and design procedures to prevent unauthorized uses of the information and to protect the confidentiality of the information received from the Treasury's Offset Programs (TOP). The procedures shall contain, but are not limited to the following:
 - .11 Secure storage area;
 - .12 Limit access to TOP information;
 - .13 Destruction of TOP information; and
 - .14 Employee awareness of civil and criminal penalties involved with improper disclosure of TOP information.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Federal Register, August 20, 1991 (56 FR 41325-31); Federal Register, August 28, 1992 (57 FR 39176-77); Federal Register, August 12, 1993 (58 FR 42937); Federal Register, September 1, 1995 (60 FR 45990); Deficit Reduction Act of 1984 (DEFRA) (31 USC 2720A); Food Stamp Act of 1977 [7 USC 2026 Section 17 (b)]; 7 CFR 273.18; and 7 CFR 273.18(n).

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